

DETAILED ACTION

1. Applicant's Response to Office Action, received 29 September 2011, is acknowledged. Claims 22 and 48 have been amended.
2. Claims 22-29, 32, 36-43 and 45-48 are pending and under consideration.

Rejections/Objections Withdrawn

3. The rejection of claims 22 and 45-48 under 35 U.S.C. 102(b) as being anticipated by Talwar et al (GB2236480, 4October1991) is withdrawn in light of the claim amendment.
4. The rejection of claims 36 and 37 under 35 U.S.C. 103(a) as being unpatentable over Talwar et al (GB2236480, 4October1991) is withdrawn in light of the claim amendment.
5. The objection to claims 28, 29, 32 and 38-43, as being dependent from rejected claims, is withdrawn in light of the claim amendment.

Rejections Maintained

6. The rejection of claims 23-27 under 35 U.S.C. 102(b) as being anticipated by Talwar et al (GB2236480, 4October1991) is maintained for reasons of record.

Claim 23 is drawn to the method of claim 22 or 48, wherein the method is for treating, managing or preventing asthma.

Claim 24 is the method of claim 23, wherein the method is for delaying attacks of asthma.

Claim 25 is the method of claim 23, wherein the method is for reducing the requirement of drugs used to improve lung function during the management of asthma.

Claim 26 is the method of claim 23, wherein the method is for improving lung function in the presence or absence of other drugs.

Claim 27 is the method of claim 23, wherein the asthma is bronchial asthma.

Since one embodiment of claim 23 is a method of preventing asthma, the teachings of Talwar et al remain anticipating the instant claims as the vaccine and methods are the same as the instantly claimed invention.

New Rejection Necessitated by Amendment

Claim Rejections - 35 USC § 112

7. The following is a quotation of the fourth paragraph of 35 U.S.C. 112:

Subject to the [fifth paragraph of 35 U.S.C. 112], a claim in dependent form shall contain a reference to a claim previously set forth and then specify a further limitation of the subject matter claimed. A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.

8. Claims 23-27 are rejected under 35 U.S.C. 112, 4th paragraph, as being of improper dependent form for failing to further limit the subject matter of the claim upon which it depends, or for failing to include all the limitations of the claim upon which it depends. Applicant may cancel the claim(s), amend the claim(s) to place the claim(s) in proper dependent form, rewrite the claim(s) in independent form, or present a sufficient showing that the dependent claim(s) complies with the statutory requirements.

Claim 23 depends from newly amended claim 22.

Claim 22 is now a method of treating or managing obstructive lung disease.

Claim 23 improperly broadens the scope of claim 22 because claim 23 is the method of claim 22, wherein the method is for not only treating or managing an obstructive lung disease, but in addition, prevents asthma.

Claims 24-27 depend from claim 23, but do not remedy the improper dependency.

Conclusion

9. Claims 23-27 remain rejected.
10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday-Thursday from 7:30 AM to 6:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, please contact the Examiner's Supervisor, Gary Nickol, at (571)272-0835.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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/Rodney P Swartz/

Primary Examiner, Art Unit 1645

November 4, 2011